

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:

LEMCO GYPSUM, INC.

Debtor

L. E. MILLER, JR., et al

Movant

v.

LEMCO GYPSUM, INC.,

and

JAMES L. DRAKE, JR., TRUSTEE

Respondents

Chapter 7 Case

Number 86-40839

MEMORANDUM AND ORDER

On May 19, 1993, the court heard L. E. Miller, Jr.'s Chapter 7 Motion for Abandonment of Property. Upon consideration of the evidence adduced at that hearing, prior proceedings in the case, the briefs of the parties, and the applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Debtor corporation was a gypsum processing plant. Kemira, a creditor in Debtor's bankruptcy case, filed an objection to the Chapter 7 Trustee's proposed sale of gypsum and asserted an ownership interest in the property. Kemira settled the dispute by paying Debtor \$100,000.00 and withdrawing all claims. Debtor agreed to withdraw its claims against Kemira and requested that the court approve the compromise. *See* Motion to Approve Compromise filed February 8, 1988. This Motion to Approve Compromise was approved by order of this court filed on April 7, 1988.

In a related adversary proceeding filed by the Chapter 7 Trustee, this court concluded that the proceeds of the settlement was in the nature of personalty as proceeds received from the sale of the gypsum. *See James L. Drake, Jr., Trustee v. Hussey, Gay & Bell, Inc., Consulting Engineers*; Chapter 7 Case No. 86-40839, Adversary No. 91-4158, slip op. at 8 (Bankr. S.D.Ga., March 22, 1993).

The Movant, L. E. Miller, Jr., is an assignee of the Savannah Port Authority industrial development bonds and asserts a security interest in the gypsum as proceeds from the sale of Debtor's personal property. The security agreement provides a security interest in the following:

All machinery, apparatus, fittings, equipment, chattels and articles of personal property acquired from the

proceeds of the bonds or otherwise and now or hereafter located on or in the real property described in said Exhibit "A" . . . and all repairs, additions, accessions, renewals and replacements thereof, all substitutions therefor and the proceeds therefrom.

See Leasehold Deed to Secure Debt and Security Agreement attached to Movant's Letter Brief filed June 3, 1993. Miller claims that the above quoted portions of the security agreement give Miller an interest in the proceeds of the gypsum. This security interest was perfected on or about July 11, 1980. *See* financing statement attached to Movant's Letter Brief. The financing statement provides a similar description of the secured property including:

All personal property, machinery, equipment, and fixtures of Debtor, whether now owned or hereafter acquired, located on real property owned by [Debtor] . . .

See Financing Statement attached to Movant's Letter Brief.

Combustion Engineering, a judgment creditor, objected to Miller's Motion for Abandonment. According to Combustion Engineering, the gypsum constituted inventory, an item or type of collateral not included in the financing statement. *See* O.C.G.A. §11-9-402. Combustion Engineering argues that the failure to list inventory in the security agreement and on the financing statement renders Miller's security interest unperfected as to inventory and proceeds of inventory. Miller argues that inventory is

included in the personal property listed in its security agreement and that he, as a prior perfected creditor, has a superior interest in the gypsum proceeds.

CONCLUSIONS OF LAW

Generally, under the Uniform Commercial Code, to be secured, a creditor must have obtained a security agreement "which contains a description of the collateral" and must file a financing statement. O.C.G.A. §§11-9-203(1)(a) and 11-9-302. A perfected security interest gives a creditor priority over unperfected or subsequently perfected secured creditors with interests in the same collateral. *See* O.C.G.A. §§11-9-301, 11-9-312(5). *See also In re Boogie Enterprises, Inc.*, 866 F.2d 1172 (9th Cir. 1989). The Uniform Commercial Code requires that the financing statement identify the parties and the secured collateral. Section 11-9-402 provides as follows:

A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral . . .

O.C.G.A. §11-9-402 (emphasis added). The financing statement does not have to include a complete description of the property. The purpose of the financing statement is to give subsequent creditors notice of the security interest. *Boogie Enterprises*, 866 F.2d at 1173.

Under O.C.G.A. Section 11-9-110, the description of collateral "is sufficient whether or not it is specific if it reasonably identifies what is described." The financing statement must contain a "reasonable description of the encumbered property." Boogie Enterprises, 866 F.2d at 1174 (citing In re Softalk Publishing Co., Inc., 856 F.2d 1328, 1331 (9th Cir. 1988)). *See also In re 199Z, Inc.*, 137 B.R. 778 (Bankr. C.D.Cal. 1992).

In Boogie Enterprises, *supra*, the creditor's financing statement listed an interest in the following:

All furniture, fixtures, equipment, personal property, machinery, inventory, and accounts receivable now owned or hereafter acquired.

866 F.2d at 1174. The creditor asserted a perfected security interest in proceeds from settlement of a lawsuit. The parties agreed that the settlement proceeds constituted a "general intangible." The creditor argued that its listed interest in "personal property" was sufficient to perfect an interest in the general intangibles such as the settlement proceeds. *Id.* The court disagreed concluding that "personal property" as used in the financing statement was "simply redundant" and added nothing to the previous description of types of collateral. Accordingly, the term "personal property" was not sufficient to perfect a security interest in anything beyond the specific categories of collateral named. *Id.* *See also In re Fuqua*, 461 F.2d 1186, 1188 (10th Cir. 1972) (interest only in "all personal property" without other limitations did not adequately describe the collateral).

Here, Movant attempts to assert an interest in inventory, a specific type of collateral defined in O.C.G.A. Section 11-9-109(4). However, Movant failed to specifically list inventory in its security agreement and financing statement. I conclude, based on the rationale of Boogie Enterprises, that the term "all personal property" is insufficient to create or perfect a security interest in Debtor's inventory, the gypsum.

As a result, the Trustee holds that inventory and its proceeds free of any interest of Movant. 11 U.S.C. §§541 and 544. In light of the foregoing, Movant's Motion for Abandonment is denied and the objection on behalf of Combustion Engineers is granted with the proceeds of the gypsum to be subject to the claims of creditors. Any distribution will be made by subsequent order.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY THE ORDER OF THIS COURT that the objection of Combustion Engineers is sustained, and the Motion for Abandonment filed by L. E. Miller, Jr., is denied.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of July, 1993.